

FAQS ABOUT AFFORDABLE CARE ACT IMPLEMENTATION PART 54

July 28, 2022

Set out below are Frequently Asked Questions (FAQs) regarding implementation of the Affordable Care Act. These FAQs have been prepared jointly by the Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the Departments). Like previously issued FAQs (available at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs> and https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act), these FAQs answer questions from stakeholders to help people understand the law and promote compliance.

COVERAGE OF PREVENTIVE SERVICES

Public Health Service (PHS) Act section 2713 and its implementing regulations relating to coverage of preventive services¹ require non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to cover, without the imposition of any cost-sharing requirements, the following items or services:²

- Evidence-based items or services that have in effect a rating of “A” or “B” in the current recommendations of the United States Preventive Services Task Force (USPSTF) with respect to the individual involved, except for the recommendations of the USPSTF regarding breast cancer screening, mammography, and prevention issued in or around November 2009;³
- Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention (CDC) with respect to the individual involved;

¹ See 26 CFR 54.9815-2713; 29 CFR 2590.715-2713; and 45 CFR 147.130.

² In addition, under section 3203 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and its implementing regulations, plans and issuers must cover, without cost-sharing requirements, any qualifying coronavirus preventive service pursuant to section 2713(a) of the PHS Act and its implementing regulations (or any successor regulations). The term “qualifying coronavirus preventive service” means an item, service, or immunization that is intended to prevent or mitigate coronavirus disease 2019 (COVID-19) and that is, with respect to the individual involved (1) an evidence-based item or service that has in effect a rating of “A” or “B” in the current USPSTF recommendations; or (2) an immunization that has in effect a recommendation from ACIP (regardless of whether the immunization is recommended for routine use). On November 6, 2020, the Departments published interim final rules with a request for comment regarding this requirement, *Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency* (85 FR 71142).

³ The USPSTF published updated breast cancer screening recommendations in January 2016. However, section 223 of Division H of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260) requires that for purposes of PHS Act section 2713, USPSTF recommendations relating to breast cancer screening, mammography, and prevention issued before 2009 remain in effect until January 1, 2023.

Guidelines, including contraceptive products more recently approved, cleared, or granted by FDA.²⁰ This coverage must also include the clinical services, including patient education and counseling, needed for provision of the contraceptive product or service.

Q3: May plans and issuers use reasonable medical management techniques for contraceptive products or services *not included* in the categories described in the HRSA-Supported Guidelines?

For contraceptive services or FDA-approved, cleared, or granted contraceptive products that are not included in a category described in the HRSA-Supported Guidelines, plans and issuers may use reasonable medical management techniques, as permitted under 26 CFR 54.9815-2713(a)(4), 29 CFR 2590.715-2713(a)(4), and 45 CFR 147.130(a)(4), to determine which specific products to cover without cost sharing only if multiple, substantially similar services or products that are not included in a category described in the Guidelines are available and are medically appropriate for the individual.²¹ If a plan or issuer uses reasonable medical management techniques with respect to multiple, substantially similar services or products, the plan or issuer must cover at least one such service or product without cost sharing.

If the individual's attending provider recommends a particular service or FDA-approved, cleared, or granted product not included in a category described in the HRSA-Supported Guidelines based on a determination of medical necessity with respect to that individual (including if there is only one service or product that is medically appropriate for the individual, as determined by their attending provider), the plan or issuer must cover that service or product without cost sharing. The plan or issuer must defer to the determination of the attending provider, and make available an easily accessible, transparent, and sufficiently expedient exceptions process that is not unduly burdensome so the individual or their provider (or other individual acting as the individual's authorized representative) can obtain coverage for the medically necessary service or product without cost sharing as required under PHS Act section 2713 and its implementing regulations and guidance.

Q4: The currently applicable 2019 HRSA-Supported Guidelines recommend instruction in fertility awareness-based methods including the lactation amenorrhea method for women desiring an alternative method. Under the 2021 HRSA-Supported Guidelines, are plans and issuers required to continue to provide coverage for instruction in fertility awareness-based methods without cost sharing?

Yes. The 2021 HRSA-Supported Guidelines include "screening, education, counseling, and provision of contraceptives (including in the immediate postpartum period)."²² Counseling and education under the 2021 HRSA-Supported Guidelines includes instruction in fertility awareness-based methods, including lactation amenorrhea.

²⁰ See FAQs Part 51, available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf> and <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-51.pdf>.

²¹ For more information on reasonable management techniques, see Q8.

²² See Women's Preventive Service Guidelines, available at <https://www.hrsa.gov/womens-guidelines>.